

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

**MEMORANDUM ON PATRICK STAPLETON'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

On September 14, 2001, the Debtor filed a motion titled "Motion to Find Attorney Patrick Stapleton, interested party Mark Ploe and Lynn Ploe in contempt of court, damages, and for return of property per Bankruptcy rule 4001(a)(3)" (Contempt Motion). The Contempt Motion was dismissed as to the Ploes by an Agreed Order entered January 25, 2002.

The court now has before it "Patrick Stapleton's Motion for Partial Summary Judgment" filed on April 17, 2002. Stapleton's summary judgment motion asserts two theories:

1. The Contempt Motion contains damages claims that are property of the Debtor's bankruptcy estate. The Debtor is barred from bringing those claims because they have not been abandoned by the Chapter 7 Trustee.
2. Most of the Debtor's claims were, or could have been, litigated in a prior state court action. The doctrine of *res judicata* now bars the Debtor from relitigating those claims.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (E) (West 1993).

I

The Debtor filed his Voluntary Chapter 7 Petition on February 11, 2000. He subsequently filed a Complaint on March 27, 2001, in the Circuit Court for Blount County, Tennessee, captioned "Donald A. Tangwall and Terry D. McFarlin v. Patrick Stapleton, Craig M. Reed, Darcy Reed, Mark Ploe, Linda Ploe, and Michael Jablonski."¹ The Debtor sought damages resulting from the Defendants' alleged conversion of his personal property in January and March 2000.

¹ "Linda Ploe" is the same person as the "Lynn Ploe" named in the Contempt Motion.

The Circuit Court dismissed the Complaint on May 31, 2001. The Order of Dismissal provides in material part:

This cause came to be heard on the 30th day of May, 2001, upon the Motion of Defendants Pat Stapleton, Mark Ploe, Linda Ploe, and Michael Jablonski, to dismiss Plaintiff's cause of action as it constitutes property of the Debtor's Estate in Plaintiff's Bankruptcy styled Donald A. Tangwall, Chapter 7 Bankruptcy No. 00-30531. . . . Upon the arguments of counsel for the Defendants, the Plaintiff proceeding pro se, review of the relevant bankruptcy law, and the case file as a whole, it is hereby ordered, adjudged, & decreed as follows:

1. That Plaintiff's suit against all Defendants is hereby dismissed by this Court as the claims contained in Plaintiff's suit constitute property of Plaintiff's Bankruptcy Estate under 11 U.S.C. § 541(a)(1).

2. This dismissal shall be with prejudice as to the Plaintiff Donald A. Tangwall, but without prejudice as to the rights of the Trustee in Bankruptcy.

Also on May 31, 2001, the Chapter 7 Trustee filed a Notice of Abandonment in this court relating to the claims asserted in the Circuit Court Complaint. The Notice of Abandonment provides:

The Trustee, by and through counsel, hereby gives notice that he is abandoning any interest of the Estate in any cause of action possessed by the Debtor against any party for the alleged wrongful eviction and dispossession of real property located at 642 Wears Valley Road, Townsend, Tennessee, and for the alleged wrongful dispossession, conversion, and or retention of personal property of the Debtor which has been listed as exempt in the Debtor's petition, as may be amended. The abandonment does not extend to any causes of action possessed by the Debtor seeking damages for any alleged prepetition misconduct or as to any request for turnover of any property of the Estate not otherwise mentioned herein.

The Debtor then filed his Contempt Motion in this court, seeking the return of his personal property, money damages for wrongful eviction, and a finding of contempt against Stapleton and the Ploes. On its face, the Contempt Motion raises only the March 2000 *postpetition* claims and does not mention the January 2000 *prepetition* claims.

II

Stapleton contends that the Circuit Court Order of Dismissal is a final order that should be afforded *res judicata* effect.² In support of his theory, Stapleton correctly points out that under Tennessee law a dismissal for failure to state a claim upon which relief can be granted may be considered a *res judicata* dismissal on the merits. *See Rampy v. ICI Acrylics, Inc.*, 898 S.W.2d 196, 208 (Tenn. Ct. App. 1994). Such dismissals are considered final because they “test the legal sufficiency of the party’s pleading.” *Id.* (citation omitted).

The Circuit Court, however, did not dismiss the Debtor’s Complaint for failure to state a claim. The Order of Dismissal was instead based on jurisdictional grounds, finding that “the claims contained in Plaintiff’s suit constitute property of Plaintiff’s Bankruptcy Estate” A dismissal for lack of jurisdiction is not an adjudication on the merits. *See Goeke v. Woods*, 777 S.W.2d 347, 349 (Tenn. 1989) (citing TENN. R. CIV. P. 41.02(3)). The preclusive effect of a jurisdictional dismissal is limited to the specific jurisdictional issues actually decided in the prior case. *See Goeke*, 777 S.W.2d at 350.

Additionally, the Order of Dismissal states that it is without prejudice as to the Chapter 7 Trustee’s rights. Were that Order a final adjudication on the merits, it certainly would not have left the door open for the Trustee to relitigate the very same claims. Therefore, because the Circuit

² “The doctrine of *res judicata* bars a second suit between the same parties or their privies on the same cause of action with respect to all issues which were or could have been litigated in the former suit.” *Massengill v. Scott*, 738 S.W.2d 629, 631 (Tenn. 1987).

Court did not reach the merits of the Debtor's Complaint, the prior Order of Dismissal is not *res judicata* as to the claims raised in the present Contempt Motion.³

III

Stapleton also contends that the Contempt Motion includes claims that are property of the estate. He is partially correct.

As noted, on May 31, 2001, the Trustee abandoned, *inter alia*, "any interest of the Estate in any cause of action possessed by the Debtor against any party for the alleged wrongful eviction and dispossession of real property . . . and for the alleged wrongful dispossession, conversion, and or retention of personal property of the Debtor which has been listed as exempt in the Debtor's petition" In other words, the Trustee has abandoned his interest in the claims presently at issue to the extent that the claims relate to real property or the Debtor's exempt personal property.

By his April 11, 2000 Amended Schedule C, the Debtor exempted "furniture and clothing" valued at \$4,000.00.⁴ The Debtor is therefore the proper party to bring a damages claim for the alleged conversion of that exempt furniture and clothing.⁵ The Debtor did not list any other

³ The Debtor's appeal of the Order of Dismissal is presently pending before the Tennessee Court of Appeals. Even if the court found merit in Stapleton's *res judicata* argument, it would hesitate to give preclusive effect to an Order currently on appeal.

⁴ Section 26-2-103 (former § 26-2-102) of the Tennessee Code allows a debtor to exempt personal property up to an aggregate value of \$4,000.00. See TENN. CODE ANN. § 26-2-103 (2000).

⁵ The court is concerned by the Debtor's valuation methods. As noted, he valued his exempt "furniture and clothing" at only \$4,000.00 yet claims injuries far exceeding that amount. As but one example, the Debtor seeks \$6,000.00 in damages for his "leather recliner." This disparity in values requires explanation because the Debtor's schedules were filed under penalty of perjury. Nonetheless, this issue does not effect the validity of the Debtor's "furniture and clothing" exemption. Unless a party in interest timely objects, property listed by a debtor as exempt is
(continued...)

property as exempt. He is therefore not the proper party to seek damages for, *inter alia*, his motor home, guns, or heirloom snow shoes.” Those items were never exempted or abandoned. Those items therefore remain property of the estate, and claims relating to those items remain under the control of the Chapter 7 Trustee.

IV

For the reasons stated herein, Patrick Stapleton’s Motion for Partial Summary Judgment will be granted in part. The scope of the Debtor’s Contempt Motion, as it relates to personal property damages, is limited to only those claims for “the alleged wrongful dispossession, conversion, and or retention” of his exempt furniture and clothing.” Patrick Stapleton’s Motion for Partial Summary Judgment must in all other respects be denied. An appropriate Order will be entered.

FILED: May 28, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

⁵(...continued)
exempt.” See *Taylor v. Freeland & Kronz*, 112 S. Ct. 1644, 1648 (1992) (citing 11 U.S.C. § 522(l); FED. R. BANKR. P. 4003(b)).

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DONALD A. TANGWALL

Debtor

ORDER

For the reasons stated in the Memorandum on Patrick Stapleton's Motion for Partial Summary Judgment filed this date, the court directs the following:

1. Patrick Stapleton's Motion for Partial Summary Judgment filed on April 17, 2002, is GRANTED in part. The Debtor's "Motion to Find Attorney Patrick Stapleton, interested party Mark Ploe and Lynn Ploe in contempt of court, damages and for return of property per Bankruptcy rule 4001(a)(3)," as it relates to personal property, is limited to claims for "the alleged wrongful dispossession, conversion, and or retention" of the Debtor's exempt "furniture and clothing."

2. Patrick Stapleton's Motion for Partial Summary Judgment filed on April 17, 2002, is, except as granted herein in paragraph 1 above, in all other respects DENIED.

SO ORDERED.

ENTER: May 28, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE